

AMENDED IN SENATE APRIL 2, 2013

SENATE BILL

No. 489

Introduced by Senator Fuller

February 21, 2013

An act to amend Section 564 of the Code of Civil Procedure, and to amend Section 855 of the Public Utilities Code, relating to water and sewer system corporations.

LEGISLATIVE COUNSEL'S DIGEST

SB 489, as amended, Fuller. Water corporations: sewer system corporations: appointment of receiver.

Under existing law, the Public Utilities Commission has regulatory authority over public utilities, including water corporations and sewer system corporations. Whenever the commission determines that a water corporation or sewer system corporation is unable or unwilling to adequately serve its ratepayers or has actually or effectively been abandoned by its owners or is unresponsive to the rules or orders of the commission, existing law authorizes the commission to petition the superior court for the county within which the corporation has its principal office or place of business for the appointment of a receiver to assume possession of the corporation's property and to operate its system upon such terms and conditions as the court prescribes.

This bill would ~~instead~~ *additionally* authorize the *court appointment of a receiver if the water or sewer system corporation has failed to provide safe and adequate service, as confirmed by the commission, and would, as an alternative to the appointment of a receiver, authorize the commission to appoint a receiver to assume possession of the corporation's property and to operate its system upon such terms and conditions as the commission prescribes. The bill would make other*

~~conforming changes.~~ another water or sewer system corporation, or other qualified entity, to serve as an interim operator of the water or sewer system. The bill would require the commission to issue decisions and orders that it deems necessary and proper to permit the interim operator to abate any danger to the public health and safety and to provide adequate service to the customers of the water or sewer system corporation. The bill would provide that the interim operator shall have the powers of a receiver and require that the interim owner assist the commission in its search for a responsible owner or operator to purchase the water or sewer system, the sale of which would be subject to the commission's approval.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 564 of the Code of Civil Procedure is
- 2 amended to read:
- 3 564. (a) A receiver may be appointed, in the manner provided
- 4 in this chapter, by the court in which an action or proceeding is
- 5 pending in any case in which the court is empowered by law to
- 6 appoint a receiver.
- 7 (b) A receiver may be appointed by the court in which an action
- 8 or proceeding is pending, or by a judge of that court, in the
- 9 following cases:
- 10 (1) In an action by a vendor to vacate a fraudulent purchase of
- 11 property, or by a creditor to subject any property or fund to the
- 12 creditor's claim, or between partners or others jointly owning or
- 13 interested in any property or fund, on the application of the
- 14 plaintiff, or of any party whose right to or interest in the property
- 15 or fund, or the proceeds of the property or fund, is probable, and
- 16 where it is shown that the property or fund is in danger of being
- 17 lost, removed, or materially injured.
- 18 (2) In an action by a secured lender for the foreclosure of a deed
- 19 of trust or mortgage and sale of property upon which there is a lien
- 20 under a deed of trust or mortgage, where it appears that the property
- 21 is in danger of being lost, removed, or materially injured, or that
- 22 the condition of the deed of trust or mortgage has not been
- 23 performed, and that the property is probably insufficient to
- 24 discharge the deed of trust or mortgage debt.

1 (3) After judgment, to carry the judgment into effect.

2 (4) After judgment, to dispose of the property according to the
3 judgment, or to preserve it during the pendency of an appeal, or
4 pursuant to the Enforcement of Judgments Law (Title 9
5 (commencing with Section 680.010)), or after sale of real property
6 pursuant to a decree of foreclosure, during the redemption period,
7 to collect, expend, and disburse rents as directed by the court or
8 otherwise provided by law.

9 (5) Where a corporation has been dissolved, as provided in
10 Section 565.

11 (6) Where a corporation is insolvent, or in imminent danger of
12 insolvency, or has forfeited its corporate rights.

13 (7) In an action of unlawful detainer.

14 (8) At the request of the Public Utilities Commission pursuant
15 to *subdivision (a) of Section 855 or Section 5259.5 of the Public*
16 *Utilities Code.*

17 (9) In all other cases where necessary to preserve the property
18 or rights of any party.

19 (10) At the request of the Office of Statewide Health Planning
20 and Development, or the Attorney General, pursuant to Section
21 129173 of the Health and Safety Code.

22 (11) In an action by a secured lender for specific performance
23 of an assignment of rents provision in a deed of trust, mortgage,
24 or separate assignment document. The appointment may be
25 continued after entry of a judgment for specific performance if
26 appropriate to protect, operate, or maintain real property
27 encumbered by a deed of trust or mortgage or to collect rents
28 therefrom while a pending nonjudicial foreclosure under power
29 of sale in a deed of trust or mortgage is being completed.

30 (12) In a case brought by an assignee under an assignment of
31 leases, rents, issues, or profits pursuant to subdivision (g) of Section
32 2938 of the Civil Code.

33 (c) A receiver may be appointed, in the manner provided in this
34 chapter, including, but not limited to, Section 566, by the superior
35 court in an action brought by a secured lender to enforce the rights
36 provided in Section 2929.5 of the Civil Code, to enable the secured
37 lender to enter and inspect the real property security for the purpose
38 of determining the existence, location, nature, and magnitude of
39 any past or present release or threatened release of any hazardous
40 substance into, onto, beneath, or from the real property security.

1 The secured lender shall not abuse the right of entry and inspection
2 or use it to harass the borrower or tenant of the property. Except
3 in case of an emergency, when the borrower or tenant of the
4 property has abandoned the premises, or if it is impracticable to
5 do so, the secured lender shall give the borrower or tenant of the
6 property reasonable notice of the secured lender's intent to enter
7 and shall enter only during the borrower's or tenant's normal
8 business hours. Twenty-four hours' notice shall be presumed to
9 be reasonable notice in the absence of evidence to the contrary.

10 (d) Any action by a secured lender to appoint a receiver pursuant
11 to this section shall not constitute an action within the meaning of
12 subdivision (a) of Section 726.

13 (e) For purposes of this section:

14 (1) "Borrower" means the trustor under a deed of trust, or a
15 mortgagor under a mortgage, where the deed of trust or mortgage
16 encumbers real property security and secures the performance of
17 the trustor or mortgagor under a loan, extension of credit, guaranty,
18 or other obligation. The term includes any successor in interest of
19 the trustor or mortgagor to the real property security before the
20 deed of trust or mortgage has been discharged, reconveyed, or
21 foreclosed upon.

22 (2) "Hazardous substance" means any of the following:

23 (A) Any "hazardous substance" as defined in subdivision (h)
24 of Section 25281 of the Health and Safety Code.

25 (B) Any "waste" as defined in subdivision (d) of Section 13050
26 of the Water Code.

27 (C) Petroleum including crude oil or any fraction thereof, natural
28 gas, natural gas liquids, liquefied natural gas, or synthetic gas
29 usable for fuel, or any mixture thereof.

30 (3) "Real property security" means any real property and
31 improvements, other than a separate interest and any related interest
32 in the common area of a residential common interest development,
33 as the terms "separate interest," "common area," and "common
34 interest development" are defined in Section 4095, 4100, and 4185
35 of the Civil Code, or real property consisting of one acre or less
36 that contains 1 to 15 dwelling units.

37 (4) "Release" means any spilling, leaking, pumping, pouring,
38 emitting, emptying, discharging, injecting, escaping, leaching,
39 dumping, or disposing into the environment, including continuing

migration, of hazardous substances into, onto, or through soil, surface water, or groundwater.

(5) “Secured lender” means the beneficiary under a deed of trust against the real property security, or the mortgagee under a mortgage against the real property security, and any successor in interest of the beneficiary or mortgagee to the deed of trust or mortgage.

SEC. 2. Section 855 of the Public Utilities Code is amended to read:

855. (a) Whenever the commission determines, after notice and evidentiary hearing pursuant to an order to show cause, that any water or sewer system corporation is unable ~~or~~ is unwilling to adequately serve its ratepayers or, or has failed to provide safe and adequate service, as confirmed by the commission, or that the water or sewer system corporation has been actually or effectively abandoned by its owners, or is unresponsive to the, or fails to comply with, those rules or orders of the commission relating to an action taken by the water or sewer system corporation that compromises its ability to provide safe and adequate service, the commission may appoint petition the superior court for the county within which the corporation has its principal office or place of business for the appointment of a receiver to assume possession of its property and to operate its system upon the terms and conditions that the ~~commission~~ court shall prescribe. The ~~commission~~ court may require, as a condition to the appointment of the receiver, that a sufficient bond be given by the receiver and conditioned upon compliance with the orders of the court and the commission, and the protection of all property rights involved. The ~~commission~~ court shall provide for disposition of the facilities and system in like manner as any other receivership proceeding in this state. The court shall presume that any finding, conclusion, or determination in a final decision or order of the commission pursuant to this section is true and correct. Pursuant to subdivision (a) of Section 1759, the superior court does not have authority to modify any action or determination by the commission as to the ability of the owner or operator to continue to operate the water or sewer system and provide safe and reliable service.

(b) The commission may, as an alternative to the appointment of a receiver pursuant to subdivision (a), enter into an agreement with another water or sewer system corporation, or other qualified

1 *entity, to serve as an interim operator of the water or sewer system.*
2 *The commission shall issue those decisions and orders that it deems*
3 *necessary and proper to permit the interim operator to abate any*
4 *danger to the public health and safety and to provide adequate*
5 *service to the customers of the water or sewer system corporation.*
6 *The interim operator shall have the powers of a receiver and shall*
7 *assist the commission in its search for a responsible owner or*
8 *operator to purchase the system, the sale of which is subject to the*
9 *commission's approval. Before any sale is consummated, the*
10 *commission may authorize the interim operator to obtain an*
11 *independent appraisal of the water or sewer system corporation.*
12 *The transfer of a water or sewer system corporation pursuant to*
13 *this subdivision shall only occur when the commission has*
14 *determined that the owner cannot operate the system in accordance*
15 *with the rules and regulations of the commission.*